IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION Nos. 604 of 1999,21603 of 2000, 20993 of 2000

AND 264 OF 2004

W.P.No.604 of 1999:

Between:

Ch. Venkat Rao, s/o. Narayana Murthy, aged 58 years, Asst. Manager, Markfed, r/o. 30-668, Chandragiri Colony East, Ramakrishnapuram Post. Secunderabad, Hyderabad District.

..... PETITIONER

AND

A.P.State Cooperative Marketing Federation Limited, (MARKFED), rep. by its Managing, Director, 7th floor, Parishram Bhavan, Basheerbagh, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to pleased to issue a writ of order or direction, more particularly one in the nature of writ of Mandamus, declaring the action of the respondent in continuing the departmental proceedings against the petitioner as illegal, arbitrary by declaring that the petitioner has retired effectively by proceedings Rc.No.EF/626/97 dt. 18.7.1998 and consequently direct the respondent to settle all retirement benefits including gratuity.

Counsel for the Petitioner: MR. A. SATYA PRASAD

Counsel for the Respondent No.: MR.VILAS V.AFZULPURKAR

WRIT PETITION NO : 21603 of 2000

Between:

K. Yagantaiah, S/o Bhujanga Rao, aged 58 years,

Occ:Manager (P & C) Retired, A.P.MARKFED, R/o

Journalist Colony, Jubili Hills, Hyderabad.

..... PETITIONER

AND

1 The Managing Director, A.P.MARKFED,
7th Floor, Parishram Bhavan, Basheerbagh, Hyderabad.
2 The General Manager, A.P.MARKFED,
7th Floor, Parishram Bhavan, Basheerbagh, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari quashing the proceedings issued by the respondents vide proceedings Rc.No.EF/153/97, dated 28.06.2000 and to declare the same as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India besides contrary to the service regulations of the MARKFED, consequently direct the respondents to release all retirement benefits to the petitioner forthwith.

Counsel for the Petitioner: MR. A. SATYA PRASAD,

Counsel for the Respondents: MR.VILAS V.AFZULPURKAR

WRIT PETITION NO : 20993 of 2000

Between:

V.Krishna Reddy, S/o. V.Gurivi Reddy,aged 58 years,
A.P.MARKFED, R/o. HIG-I, Block-I, Flat No. 16, Baghlingampally,

Hyderabad.

..... PETITIONER

AND

1 The Managing Director, A.P.MARKFED,
7th Floor, Parishram Bhavan, Basheerbagh, Hyderabad.
2 The General Manager, A.P.MARKFED,
7th Floor, Parishram Bhavan, Basheerbagh, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari quashing the proceedings issued by the respondents vide Rc.No.EJ/537/97, dt. 26-5-2000 to the extent of continuing the departmental enquiry and treating the service of the petitioner under Suspension is illegal, arbitrary and contrary to the service regulations of the MARKFED apart from violative of Article 14, 21 of the Constitution of India besides pronouncement of the apex court and this Hon'ble Court, consequently to direct the respondent to release all retirement benefits to the petitioner forthwith.

Counsel for the Petitioner: MR. A. SATYA PRASAD

Counsel for the Respondents: MR.VILAS V.AFZULPURKAR

WRIT PETITION NO : 264 of 2004

Between:

S. Pakeer Raju S/o Surapa Raju,aged 59 years,
Retd. Branch Manager, District Co-operative Central bank Ltd.,
Kakinada, East Godavari District

..... PETITIONER

AND

1 The District Co-operative Central Bank Ltd., rep by General Manager,

Nagamlli Thota, Kakinada, East Godavari District
2 The Enquiry Officer/ Deputy General Manager District Co-operative

Central Bank Ltd.Head Office, Kakinada
3 The Commissioner for Co-operation and Registrar of Co-operative

Societies A.P., Hyderabad

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or direction more particularly one in the nature of a Writ of Mandamus by declaring the action of the 1st respondent in initiating and continuing the domestic enquiry against the petitioner after he was retired from service on superannuation and in not paying his retirement benefits as illegal, arbitrary and violative of principles of Natural justice and without power, authority or jurisdiction and also violative of Articles 14,16 & 21 of the Constitution of India and consequently direct the 1st respondent to pay the retirement benefits of the petitioner immediately with interest and with all consequential benefits.

Counsel for the Petitioner: MR. V. AJAYA KUMAR

Counsel for the Respondents 1 and 2: MR. C.V. MOHAN REDDY,

Counsel for the Respondent No.3: GP FOR COOPERATION

The Court made the following :

COMMON ORDER:

In all the four Writ Petitions the issue involved is as to whether the respondents are having power, authority or jurisdiction either to initiate or to continue the departmental proceedings and to take consequential action, once the petitioners are retired from service on attaining the superannuation when there is no provision, rule or regulation governing the service conditions of the petitioners empowering the respondents to do so.

2. The contention of the petitioners is that there is no rule, regulation or provision governing the service conditions of the petitioners empowering the respondents either to initiate or to continue any departmental proceedings or to take any

disciplinary action after the petitioners are retired on superannuation. Therefore, the impugned orders in conducting disciplinary proceedings and the action taken after the retirement is without jurisdiction and without any authority of law and therefore the said action is liable to be set aside. It is further stated that none of the petitioners were retained in service so as to enable the respondents to complete the departmental enquiry and therefore the continuation of departmental enquiry after the retirement is beyond the scope of the service conditions and regulation and therefore continuation of departmental proceedings after their retirement is illegal and unsustainable. It is further stated that the subject matter of the Writ Petitions is squarely covered by the judgment of the Apex Court in BHAGIRATHI JENA v. BOARD OF DIRECTORS, O.S.F.C. AND OTHERS reported in (1999) 3 SCC 666 and also various other judgments. It is also brought to my notice that following the said judgment of the Apex Court in Bhagiratha Jena and Board of Director, O.S.F.C., C.H.Sarayya Vs. Nizam Sugars Limited, Hyderabad, 2000(2) ALD 805 (DB) and State Bank of India Vs. A.N.Gupta and others (1997) 8 SCC 60, I have allowed the W.P.No.8403 of 2004 reported in 2004 (5) ALD 603 in C.Surender Reddy Vs. Managing Director, A.P.Dairy Development Co-operative Federation Ltd., Hyderabad.

3. In view of the aforesaid judgments, I am of the opinion that having allowed all the petitioners to retire on attaining the age of superannuation and in the absence of specific provisions either to initiate or to continue departmental proceedings or to continue the disciplinary action after their retirement by the respondents is illegal and contrary to the aforesaid judgments. None of the provisions either to continue or to initiate the departmental proceedings have been brought to my notice and therefore I am of the view that once the petitioners retire from service, the relationship between the employer and employee ceases to continue and therefore the respondents' action in withholding the retrial benefits is illegal. If any liability is fixed during the course of the employment, such liability alone can be recovered or withheld to the extent of the liability, which has been fixed by them while the petitioners were in service.

4. Learned counsel appearing for the respondents submits that if the petitioners

have committed any offence, they cannot be let free and if they have committed any misappropriation of funds, it is not open for the petitioners to contend that the departmental proceedings initiated while they were in service cannot be continued. In so far as the criminal proceedings are concerned, if the petitioners committed any criminal offence, it is needless to say that it is always open for the respondents to set the law in motion. But, nothing has been brought to my notice with regard to the criminal offences said to be committed by the petitioners and if they have committed any offence, as stated supra, it is always open for the respondents to set the law in motion. Insofar as the misappropriation and initiation of departmental proceedings are concerned, I have taken a view that if any liability is finally fixed during the course of the employment, such liability alone the respondents can recover or withhold to the extent of the liability, which has been fixed by them while the petitioners were in service.

5. In view of the aforesaid judgments in Bhagiratha Jena and Board of Director, O.S.F.C., C.H.Sarayya Vs. Nizam Sugars Limited, Hyderabad, 2000(2) ALD 805 (DB) and State Bank of India Vs. A.N.Gupta and others (1997) 8 SCC 60, and 2004 (5) ALD 603 in C.Surender Reddy Vs. Managing Director, A.P.Dairy Development Co-operative Federation Ltd., Hyderabad, all the Writ Petitions are allowed directing the respondents to release all the pensionary benefits payable to the petitioners within two months from the date of receipt of a copy of the order. No order as to costs.

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V. ESWARAIAH, J

Dated: 10-11-2004.

ccm

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Tenth day of November, Two Thousand and Four.

ASSISTANT REGISTRAR

To:

1 The Managing Director, A.P.MARKFED,
7th Floor, Parishram Bhavan, Basheerbagh, Hyderabad.
2 The General Manager, A.P.MARKFED,
7th Floor, Parishram Bhavan, Basheerbagh, Hyderabad.

3 The District Co-operative Central Bank Ltd., rep by General Manager,

Nagamlli Thota, Kakinada, East Godavari District
4 The Enquiry Officer/ Deputy General Manager District Co-operative

Central Bank Ltd.Head Office, Kakinada
5 The Commissioner for Co-operation and Registrar of Co-operative

Societies A.P., Hyderabad

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A.P.Hyderabad(OUT)

7 2 CD copies.